

5-5.000 PROCEDURES

- 5-5.100 General Procedures in District Court Litigation**
 - 5-5.111 Transmittal of Pleadings and Memoranda**
 - 5-5.112 Stipulations**
 - 5-5.113 Assistance by Other Attorneys**
 - 5-5.121 Suits Against the United States, Federal Agencies or Officials -- Appearances by United States Attorneys**
 - 5-5.122 Suits Against the United States, Federal Agencies or Officials -- Removal of State Court Actions**
 - 5-5.123 Suits Against the United States, Federal Agencies or Officials -- Sovereign Immunity Not Waivable**
 - 5-5.124 Suits Against the United States, Federal Agencies or Officials -- Service of Process on the Attorney General**
 - 5-5.125 Suits Against the United States, Federal Agencies or Officials -- Counterclaims**
 - 5-5.130 Proposed Findings of Fact and Conclusions of Law**
 - 5-5.140 Costs**
 - 5-5.151 Recording Judgments**
 - 5-5.152 Perfecting Lien of Judgments**
 - 5-5.153 Collection of Claims or Judgments**
 - 5-5.154 Execution to Enforce Collection of Judgments**
 - 5-5.155 Execution to Enforce Judgments for Possession**
 - 5-5.156 Post-Judgment Collection Efforts**
 - 5-5.161 Appeals -- Copies of Decisions to be Forwarded to Supervising Section**
 - 5-5.162 Recommendation With Respect to Appeal**
 - 5-5.210 Settlement Authority of the Assistant Attorney General**
 - 5-5.220 Settlement Authority of Officers Within the Environment and Natural Resources Division**
 - 5-5.230 Settlement and Dismissal Authority of United States Attorneys**
 - 5-5.240 Limitations on Delegations**
-

5-5.100

General Procedures in District Court Litigation

The instructions set forth in Sections 5-5.110 through 5-5.113 are applicable to all cases under supervision of the Division, whether they be cases directly referred to the United States Attorney, cases for which primary responsibility has been assigned to United States Attorneys by the Assistant Attorney General, cases which are the joint responsibility of the Division and the United States Attorneys or cases which are the primary responsibility of the Division.

5-5.111 Transmittal of Pleadings and Memoranda

Except for such papers as are originally prepared in the Department and then transmitted to the United States Attorneys for filing, the United States Attorneys should submit to the appropriate Section of the Environment and Natural Resources Division in each case involving matters under the jurisdiction of the Section, one copy of the complaint, information or indictment, and one copy of all other papers filed by any party or by the court including pleadings, orders, proposed findings, judgments, opinions, briefs, memoranda, offers in compromise, plea offers, and any other instrument or record.

5-5.112 Stipulations

The United States Attorney may stipulate to any fact required to be proved by the government, or to the authenticity of government records. In no case except certain direct referral matters should a United States Attorney enter into a stipulation concluding the substantive rights of the United States, or consent to entry of judgment in favor of the adverse party, without specific authority from the Environment and Natural Resources Division. Specific authority from the Environment and Natural Resources Division to enter into such stipulations, or consent to judgment, is required in all nondirect referral matters and in the following direct referral matters: Direct referral wildlife import, export, Airborne Hunting Act, Bald and Golden Eagle Protection Act, and Wild Horses and Burros Act actions.

5-5.113 Assistance by Other Attorneys

United States Attorneys and their Assistants shall themselves conduct and direct all cases within the jurisdiction of this Division handled by them. There is no objection to United States Attorneys receiving assistance from attorneys connected with other offices of the government in the preparation and trial of cases, but it should be understood that such attorneys assist only, and do not conduct, direct, or control cases in which they may be interested. 28 U.S.C. §§ 509, 516 and 547. Unless designated as Special Assistant United States Attorneys, such trial attorneys are only "of counsel" to the United States Attorney; they do not control or direct the conduct of cases in which they are interested, and they may not sign pleadings or briefs on behalf of the government or its officers, employees, or agents.

5-5.121 Suits Against the United States, Federal Agencies or Officials -- Appearances by United States Attorneys

Upon being served with the complaint designating the United States or a federal official or agency as a defendant, a United States Attorney shall immediately take such steps as are necessary to protect the federal interest, and shall immediately transmit copies of the complaint and other papers to the supervisory section of the Environment and Natural Resources Division. However, when time permits, no appearance should be made until instructions from the Department are obtained. If necessary, the request for instruction should be only by telephone or telefax directed to the Chief of the Section having jurisdiction over the type of action involved.

5-5.122 Suits Against the United States, Federal Agencies or Officials -- Removal of State Court Actions

An action against the United States, a federal agency, or a federal official, brought in a state court, may be removed to a federal court (28 U.S.C. § 1442). The United States Attorney should seek instructions immediately as to whether an action in a state court should be removed to a federal court, and before receiving instructions, he/she should take no steps in the state court which would prevent removal.

5-5.123 Suits Against the United States, Federal Agencies or Officials -- Sovereign Immunity Not Waivable

Neither the Department of Justice nor any United States Attorney may consent to suits against the United States, its officers or agents. A recent statute having some effects upon the doctrine of sovereign immunity is the Act of October 21, 1976, Pub.L. No. 94-574.

5-5.124 Suits Against the United States, Federal Agencies or Officials -- Service of Process on the Attorney General

The Attorney General has designated the Deputy Attorney General and the Administrative Assistant to the Attorney General to accept service of pleadings and process for him/her. In the absence of specific authority from the Attorney General or his/her designees, United States Attorneys have no authority to accept such service.

5-5.125 Suits Against the United States, Federal Agencies or Officials -- Counterclaims

In suits against federal agencies, or federal employees acting in their official capacity, counterclaims shall not be filed in the name of the defendants. If a basis for a counterclaim exists in such a suit, a separate action may be filed in the name of the United States, but such action may be filed only with the prior approval of the Assistant Attorney General.

5-5.130 Proposed Findings of Fact and Conclusions of Law

In all actions in the federal courts tried upon the merits without a jury, care should be taken to have proper findings of fact and conclusions of law entered by the court as provided by Rule 52(a), Fed. R. Crim. P. When possible, two copies of the requests for findings should be transmitted to the Environment and Natural Resources Division for comment and discussion before filing.

5-5.140 Costs

In no case may payment of costs be waived. Whenever money is accepted as full or partial payment, or in compromise, it must be applied first to court costs.

5-5.151 Recording Judgments

Whenever a judgment is obtained by the United States affecting title to its property, the necessary recordation should be made promptly in accordance with the requirements of local law and the provisions of 28 U.S.C. § 1962 *et seq.*

5-5.152 Perfecting Lien of Judgments

Whenever a judgment for money is recovered by the United States, the necessary action shall be taken in accordance with the provisions of local law to perfect and preserve the lien of the judgment upon all property of the judgment debtor in the district in which the judgment has been entered or in any other district where the property of the defendant may be found. *See* 28 U.S.C. §§ 1962 and 1963, *and Rhea v. Smith*, 274 U.S. 434 (1927).

5-5.153 Collection of Claims or Judgments

Except when required by the circumstances of a particular case, no property other than money should be accepted in full or part payment of a claim, compromise, or judgment and in no event shall property other than money be accepted until all incurred court costs are paid. The procedure followed in the collection and transmittal of funds is set forth in the title to this Manual relating to the Administrative Division.

5-5.154 Execution to Enforce Collection of Judgments

Whenever necessary to enforce collection of a money judgment, the United States Attorney or the field attorney should ascertain such facts as the facilities of his/her office will permit to determine whether the judgment debtor has property subject to execution and whenever necessary should invoke the aid of the field officer of the agency at whose instance the action originally was instituted. If property subject to execution is found, execution should be issued and a levy made. If no property subject to execution is found, execution should not be issued unless required by local law to perfect or protect the judgment lien or its priority, or unless the United States Attorney has reason to believe the issuance of execution will induce voluntary payment. If no distrainable property is found, the Department should be informed of the results of the investigation and the case should be held in abeyance until a determination can be made as to what further action should be taken.

5-5.155 Execution to Enforce Judgments for Possession

A judgment for possession of property owned by the United States should be served upon all defendant trespassers, including those in privity with such defendants. If they fail to vacate the property in accordance with the judgment, a writ of assistance should be obtained from the clerk of the court and delivered to the U.S. Marshal for execution. When justified by unusual circumstances, an injunction may be obtained against the unlawful occupants. If they refuse to vacate the premises as required by the injunction, contempt proceedings may be instituted. Service of the injunction upon each respondent is a prerequisite to the institution of contempt proceedings.

5-5.156 Post-Judgment Collection Efforts

The instructions issued by the Civil Division governing action to be taken for the collection of judgments, set forth in Title 11, Debt Collections, are applicable to all judgments entered in favor of the United States, and reference is made to them for appropriate guidelines to be followed in collection activities to be undertaken after the entry of judgment in favor of the United States in Environment and Natural Resources Division cases. This does not enlarge the authority of cases beyond the limits stated in USAM 5-2.000.

5-5.161 Appeals -- Copies of Decisions to be Forwarded to Supervising Section

In cases subject to the supervision of the Environment and Natural Resources Division in which a decision is rendered, the United States Attorney shall, by the most expeditious means, forward a copy of the decision to the Chief of the Section involved.

5-5.162 Recommendation With Respect to Appeal

In any case handled by a United States Attorney in which a final decision is rendered, the United States Attorney shall proceed in accordance with the provisions of USAM 2-2.000.

5-5.210 Settlement Authority of the Assistant Attorney General

The authority delegated by the Attorney General to the Assistant Attorney General to compromise suits is set forth in 28 C.F.R. §§ 0.016 through 0.172. As is hereinafter set forth, the Assistant Attorney General has redelegated to the Deputy Assistant Attorneys General, the Section Chiefs, and to the United States Attorneys, authority to compromise, close, or dismiss, certain types of cases. Except for those claims expressly and specifically authorized to be compromised, closed or dismissed by the United States Attorneys, no claim or case within the area of responsibility of the Environment and Natural Resources Division may be compromised, closed or dismissed without the specific authority of the Attorney General, the Assistant Attorney General or the appropriate Section Chief. Instruction with respect to submitting proposed settlements or compromises for approval, and for authorization to dismiss cases, are set forth in USAM 5-15.600 for cases under the supervision of the Land Acquisition Section; USAM 5-14.310C for cases under the supervision of the Indian Resources Section; USAM 5-10.600 for cases under the supervision of the Wildlife and Marine Resources Section; and USAM 5-7.600 for cases under the supervision of the General Litigation Section.

5-5.220 Settlement Authority of Officers Within the Environment and Natural Resources Division

Certain authority of the Assistant Attorney General to compromise claims has been delegated to the Deputy Assistant Attorneys General and the Chiefs of the various litigating sections. The most recent such delegation of authority was effected on October 29, 1976, by Environment and Natural Resources Directive No. 7-76. That directive as amended provides generally as follows:

A. Delegation to Deputy Assistant Attorney General. Subject to the limitations imposed by USAM 5-5.240 the Deputy Assistant Attorney General in the Environment and Natural Resources Division is hereby authorized, with respect to matters assigned to the Environment and Natural Resources Division, to accept or reject offers in compromise of claims against the United States in which the amount of the proposed settlement does not exceed \$500,000, and of claims in behalf of the United States in which the gross amount of the original claims does not exceed \$500,000.

B. Delegation to Section Chiefs. Subject to the limitations imposed by USAM 5-5.240 the Chiefs of the litigating sections of the Environment and Natural Resources Division are hereby authorized, with respect to matters assigned to their respective sections, to accept or reject offers in compromise of claims against the United States in which the amount of the proposed settlement does not exceed \$300,000, and of the claims in behalf of the United States in which the gross amount of the original claim does not exceed \$300,000.

5-5.230 Settlement and Dismissal Authority of United States Attorneys

Environment and Natural Resources Division Directive No. 7-76 (41 Fed.Reg. 53660), as amended, authorizes United States Attorneys to compromise, close or dismiss certain cases. Pertinent portions of the Directive, as amended, provide generally as follows:

Delegations to United States Attorneys

1. Compromise of Land Cases. Subject to the limitations imposed by USAM 5-5.240, United States Attorneys are authorized, without the prior approval of the Environment and Natural Resources Division, to

accept or reject offers in compromise in the direct referral land cases listed in subparagraph A-1 of section I, and in claims against the United States in which the amount of the proposed settlement does not exceed \$200,000, if the authorized field officer of the interested agency concurs in writing, except that where the United States is a plaintiff, a United States Attorney may accept an offer without the concurrence of the field officer if the acceptance is based solely upon the financial circumstances of the debtor.

2. Compromise of Environmental Cases. Prior delegations of authority to the United States Attorneys to settle any type of case in which the Department of Justice represents the Environmental Protection Agency, or the Administrator or any other official of that Agency, are hereby revoked; all offers in compromise of such cases shall be submitted to the Assistant Attorney General of the Environment and Natural Resources Division for appropriate action.

3. Compromise of Wildlife Cases. Subject to the limitations imposed by section USAM 5-5.240 United States Attorneys are authorized, without prior approval of the Environment and Natural Resources Division, to settle all direct referral actions relating to wildlife law enforcement.

4. Compromise of Condemnation Cases.

a. Subject to the limitations imposed in Paragraph D of USAM 5-5.220 United States Attorneys are hereby authorized, without prior approval of the Environment and Natural Resources Division, to accept or reject offers in compromise of claims against the United States for just compensation in condemnation proceedings in any case in which the gross amount of the proposed settlement does not exceed \$200,000.

b. When a United States Attorney has settled a condemnation proceeding under the authority conferred upon him/her by the foregoing subparagraph the United States Attorney shall promptly secure the entry of judgment and distribution of the award, and shall take all other steps necessary to dispose of the matter completely. The United States Attorney concerned shall also immediately forward to the Department a report, in the form of a letter or memorandum, bearing his/her signature or showing his/her personal approval, stating the action taken and containing an adequate statement of the reasons therefor. In routine cases, a form, containing the minimum elements of the required report, may be used in lieu of a letter or a memorandum. In any case, special care shall be taken to see that the report contains a statement as to what the valuation testimony of the United States would have been if the case had been tried.

5. Closing or Dismissal of Matters and Cases. Subject to the limitations imposed in USAM 5-5.240 a direct referral matter described in Section I may be closed without action by the United States Attorney or, if in court, may be dismissed by him if the field officer of the interested agency concurs in writing that it is without merit legally or factually. Except for claims on behalf of Indian or Indian tribes, the United States Attorney may close a claim without consulting the field office of the interested agency if he concludes (a) that the cost of collection under the circumstances would exceed the amount of the claim is uncollectible; claims on behalf of Indian individuals or Indian tribes may not be closed merely because the cost of collection might exceed the amount the claim.

5-5.240 Limitations on Delegations

The authority to compromise, close or dismiss cases delegated in USAM 5-5.220 and 5-2.230, may not be exercised when:

A. For any reason, the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totaling more than the respective amounts designated in USAM 5-5.220 and 5-5.230;

B. Because a novel question of law or a question of policy is presented, or for any other reason, the offer should, in the opinion of the officer or employee concerned, receive the personal attention of the Assistant Attorney General in charge of the Environment and Natural Resources Division; and

C. The agency or agencies involved are opposed to the proposed closing or dismissal of a case, or acceptance or rejection of the offer in compromise.

If any of the above conditions exist, then the matter shall be submitted for resolution to the Assistant Attorney General in charge of the Environment and Natural Resources Division.